

PUBLIC COMMENTS ON DRAFT ADVISORY OPINIONS

Members of the public may submit written comments on draft advisory opinions that are on the agenda of a Commission public meeting.

DRAFT ADVISORY OPINION 2010-13 is now available for comment. It was requested by James Tall, treasurer, on behalf of the Libertarian Party of Florida, and is scheduled to be considered by the Commission at its public meeting on Thursday, July 29, 2010.

If you wish to comment on the DRAFT ADVISORY OPINION 2010-13, please note the following requirements:

- 1) Comments must be in writing, and they must be both legible and complete.
- 2) Comments must be submitted to the Office of the Commission Secretary by hand delivery or fax ((202) 208-3333), with a duplicate copy submitted to the Office of General Counsel by hand delivery or fax ((202) 219-3923).
- 3) Comments must be received by noon (Eastern Time) on July 28, 2010.
- 4) The Commission generally will not accept comments received after the deadline. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.
- 5) All timely received comments will be made available to the public at the Commission's Public Records Office and will be posted on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

REQUESTOR APPEARANCES BEFORE THE COMMISSION

The Commission has implemented a pilot program to allow advisory opinion requestors, or their counsel, to appear before the Commission to answer questions at the open meeting at which the Commission considers the draft advisory opinion. This program took effect on July 7, 2009.

Under the program:

- 1) A requestor has an automatic right to appear before the Commission if any public draft of the advisory opinion is made available to the requestor or requestor's counsel less than one week before the public meeting at which the advisory opinion request will be considered. Under these circumstances, no advance written notice of intent to appear is required. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2).**
- 2) A requestor must provide written notice of intent to appear before the Commission if all public drafts of the advisory opinion are made available to requestor or requestor's counsel at least one week before the public meeting at which the Commission will consider the advisory opinion request. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2).**

The notice of intent to appear must be received by the Office of the Commission Secretary by hand delivery, email Secretary@fec.gov, or fax ((202) 208-3333), no later than 48 hours before the scheduled public meeting. Requestors are responsible for ensuring that the Office of the Commission Secretary receives timely notice.

- 3) Requestors or their counsel unable to appear physically at a public meeting may participate by telephone, subject to the Commission's technical capabilities.**
- 4) Requestors or their counsel who appear before the Commission may do so only for the limited purpose of addressing questions raised by the Commission at the public meeting. Their appearance does not guarantee that any questions will be asked.**

FOR FURTHER INFORMATION:

Press inquiries: Judith Ingram
Press Officer
(202) 694-1220

Commission Secretary: (202) 694-1040

Comment submission procedure: Rosemary C. Smith
Associate General Counsel
(202) 694-1650

Other inquiries:

To obtain copies of documents related to 2010-13, please contact the Public Records Office at (202) 694-1120 or (800) 424-9530 or visit the Commission's website at <http://www.saos.nictusa.com/saos/searchao>.

ADDRESSES

Office of Commission Secretary
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Office of the General Counsel
ATTN: Rosemary C. Smith, Esq.
Federal Election Commission
999 E Street, NW
Washington, DC 20463

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

2010 JUL 22 P 3: 54

AGENDA ITEM

For Meeting of 07-29-10

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*
General Counsel

Rosemary C. Smith *RC*
Associate General Counsel

Amy L. Rothstein *ALR*
Assistant General Counsel

Jonathan M. Levin *JL*
Senior Attorney

Eric Spengler *ES*
Law Clerk

Subject: Draft AO 2010-13 (Libertarian Party of Florida)

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for July 29, 2010.

Attachment

1 ADVISORY OPINION 2010-13

2
3 Mr. James Tall, Treasurer
4 Libertarian Party of Florida
5 P.O. Box 3012
6 Winter Park, FL 32790

DRAFT

7
8 Dear Mr. Tall:

9 We are responding to your inquiry regarding the status of the Libertarian Party of
10 Florida (the "LPF") as a State committee of a political party under the Federal Election
11 Campaign Act of 1971, as amended (the "Act"), and Commission regulations. The
12 Commission concludes that the LPF qualifies as a State committee of a political party
13 because: (1) the Libertarian Party qualifies as a political party; (2) the LPF is part of the
14 official Libertarian Party structure; and (3) the LPF is responsible for the day-to-day
15 operations of the Libertarian Party at the State level.

16 ***Background***

17 The facts presented in this advisory opinion are based on your letter received on
18 June 18, 2010, your email received on July 1, 2010, and publicly available information on
19 the websites of the Commission and the Florida Division of Elections.

20 The LPF's Constitution, By-Laws, and Standing Rules detail various aspects of
21 the function, organization, and operation of the LPF.¹ The LPF Constitution provides
22 that the LPF's "object and purpose . . . is to engage in political action in the State of
23 Florida, to serve as an affiliate organization of the Libertarian Party in national politics,
24 and to serve as a nucleus for designated county affiliate organizations in matters of state-
25 wide political action." LPF Constitution, art. I, sec. 2. The purposes of the LPF include

¹ These documents are included in the advisory opinion request, which is available at
<http://saos.nictusa.com/saos/searchao>.

1 “[s]upporting candidates for national office, nominating and supporting candidates for
2 state and congressional district offices”; “[p]romoting, chartering and coordinating
3 county affiliate parties within the State of Florida”; and “[e]ntering into political
4 information activities, including the promoting and securing of party members.” *Id.* at
5 art. I, sec. 3.

6 The “affairs, properties, and funds” of the LPF are controlled and managed by the
7 Executive Committee, which consists of the Officers (a Chairperson, a Vice Chairperson,
8 a Secretary, and a Treasurer), three Directors-at-Large, and one Regional Representative
9 from each of the regions designated by the By-Laws. *Id.* at art. III, secs. 1–2. Members
10 of the Executive Committee are elected by the delegates at the LPF’s Annual Business
11 Meeting, as are delegates to the National Convention of the Libertarian Party. LPF By-
12 Laws, art. III, sec. 1 and art. IV, sec. 5. The LPF has five Standing Committees, each
13 tasked with various duties. LPF Constitution, art. III., secs. 3–8. The Electoral Victory
14 Committee, for example, is responsible for nominating and endorsing candidates for
15 political office. *Id.* at art. III, sec. 7; LPF Standing Rules, art. XIII.

16 A memorandum from Robert S. Kraus, Director of Operations of the Libertarian
17 National Committee, confirms the status of the LPF as the Libertarian National
18 Committee’s sole affiliate for the State of Florida.

19 The LPF placed a candidate for the United States Senate, Alex Snitker, on the
20 2010 general election ballot in Florida. Mr. Snitker is identified on the general election

1 ballot in Florida as a candidate of the Libertarian Party.²

2 ***Question Presented***

3 *Does the LPF qualify as a State committee of a political party within the meaning*
4 *of the Act and Commission regulations?*

5 ***Legal Analysis and Conclusion***

6 Yes, the LPF qualifies as a State committee of a political party within the
7 meaning of the Act and Commission regulations.

8 A “State committee” is an organization that, by virtue of the by-laws of a
9 “political party,” is part of the official party structure and is responsible for the day-to-
10 day operation of the political party at the State level, as determined by the Commission.
11 2 U.S.C. 431(15); 11 CFR 100.14(a). A “political party” is an “association, committee,
12 or organization which nominates a candidate for election to any Federal office whose
13 name appears on the election ballot as the candidate of such association, committee, or
14 organization.” 2 U.S.C. 431(16); *see also* 11 CFR 100.15.

15 The determination of whether a State party organization qualifies as a State
16 committee of a political party turns on three elements: (1) the national party of which the
17 State party organization is a part must itself be a “political party”; (2) the State party
18 organization must be part of the official structure of the national party; and (3) the State
19 party organization must be responsible for the day-to-day operations of the national party
20 at the State level. *See, e.g.*, Advisory Opinions 2009-16 (Libertarian Party of Ohio),

² The political party identification for Mr. Snitker appears on the Florida Division of Elections website at <http://election.dos.State.fl.us/candidate/CanList.asp> (last visited July 22, 2010). Although the 2008 general election ballot in Florida identified former Representative Bob Barr as a presidential candidate of the Libertarian Party, *see id.*, the LPF’s advisory opinion request relies solely on Mr. Snitker’s placement on the 2010 general election ballot as a candidate for the U.S. Senate.

1 2008-16 (Libertarian Party of Colorado), and 2007-06 (Libertarian Party of Indiana). The
2 Commission addresses each of these three elements in turn.

3 *(1) Qualification of the Libertarian Party as a Political Party*

4 First, the Commission must assess whether the national party qualifies as a
5 “political party” under the Act and Commission regulations. 2 U.S.C. 431(15) and (16);
6 11 CFR 100.14 and 100.15; *see* Advisory Opinions 2009-16 (Libertarian Party of Ohio),
7 2008-16 (Libertarian Party of Colorado), and 2007-06 (Libertarian Party of Indiana).
8 Since 1975, the Commission has recognized the Libertarian Party as a political party and
9 the Libertarian National Committee as the national committee of the Libertarian Party.
10 *See* Advisory Opinion 1975-129 (National Committee of the Libertarian Party); *see also*
11 Advisory Opinions 2009-16 (Libertarian Party of Ohio) and 2008-16 (Libertarian Party
12 of Colorado). The Commission is aware of no factual changes that would alter those
13 conclusions.

14 *(2) Status of LPF as Part of the Official Libertarian Party Structure*

15 Second, the requesting organization must qualify as part of the official structure
16 of the national party. 2 U.S.C. 431(15); 11 CFR 100.14(a). In previous advisory
17 opinions, the Commission has considered supporting documentation indicating that the
18 State party organization was part of the official party structure. *See, e.g.,* Advisory
19 Opinions 2009-16 (Libertarian Party of Ohio), 2008-16 (Libertarian Party of Colorado),
20 and 2007-06 (Libertarian Party of Indiana). Here, the memorandum from Robert S.
21 Kraus, Director of Operations of the Libertarian National Committee, suffices to establish
22 that the LPF is part of the Libertarian Party’s official party structure.

1 ***(3) Responsibility of the LPF for the Day-to-Day Operations of the Libertarian***
2 ***Party***

3 Third, the requesting organization must maintain responsibility for the day-to-day
4 operations of the national party at the State level. 2 U.S.C. 431(15); 11 CFR 100.14(a).
5 In previous advisory opinions, the Commission has evaluated this third element by
6 considering: (a) whether the requesting organization has placed a “candidate” on the
7 ballot (thereby qualifying as a “political party”); and (b) whether the by-laws or other
8 governing documents of the requesting organization indicate activity commensurate with
9 the day-to-day functions and operations of a political party at the State level.³ *See, e.g.,*
10 *Advisory Opinions 2009-16 (Libertarian Party of Ohio), 2008-16 (Libertarian Party of*
11 *Colorado), and 2007-06 (Libertarian Party of Indiana).*

12 Ballot placement on behalf of a “candidate” by the State party organization is
13 required because the requesting organization’s existence as a political party is necessary
14 for State committee status. A State party organization must actually obtain ballot access
15 for one or more “candidates,” as defined in the Act. *See* 2 U.S.C. 431(2), 431(15), and
16 431(16); 11 CFR 100.3(a), 100.14(a), and 100.15; *see also* *Advisory Opinions 2009-16*
17 *(Libertarian Party of Ohio), 2008-16 (Libertarian Party of Colorado), and advisory*
18 *opinions cited therein.*

19 The LPF has placed Alex Snitker on the 2010 Florida ballot as the Libertarian
20 Party’s candidate for U.S. Senate. Disclosure reports filed with the Commission confirm
21 that Mr. Snitker’s principal campaign committee received contributions or made

³ Where appropriate, the Commission may also consider the operation of State law in making these determinations. *See* 11 CFR 100.14(a).

1 expenditures in excess of \$5,000⁴ and, therefore, Mr. Snitker satisfies the Act's definition
2 of a "candidate." *See* 2 U.S.C. 431(2); 11 CFR 100.3(a). Accordingly, the LPF qualifies
3 as a "political party" under the Act.

4 The LPF Constitution, By-Laws, and Standing Rules detail the organizational
5 structure of the LPF and establish specific responsibilities for the LPF's officers and
6 committees. *See* LPF Constitution, art. I, secs. 2-3, and art. III secs. 1-8; LPF By-Laws,
7 art. III, sec. 1, and art. IV; LPF Standing Rules, art. I, and art. XIII. For example, they
8 provide that the LPF is an affiliate of the Libertarian Party at the State level and is
9 responsible for developing county affiliate parties within the State of Florida; holding
10 conventions and meetings; and supervising efforts to provide party registration under
11 State and Federal voting laws. LPF Constitution, art. I, secs. 2 and 3; LPF By-Laws, art.
12 IV; LPF Standing Rules, art. I. The governing documents also provide that delegates at
13 the LPF's Annual Business Meeting elect the members of the Executive Committee,
14 which controls and manages the "affairs, properties, and funds" of the LPF. LPF
15 Constitution, art. III, sec. 2; LPF By-Laws, art. III, sec. 1.

16 Taken together, the LPF's governing documents delineate activity commensurate
17 with the day-to-day functions and operations of a political party on a State level, and are
18 consistent with the State party rules reviewed in previous situations where the
19 Commission has recognized the State committee status of a political organization. *See*,
20 *e.g.*, Advisory Opinions 2009-16 (Libertarian Party of Ohio), 2008-16 (Libertarian Party
21 of Colorado), and 2007-06 (Libertarian Party of Indiana). Therefore, the LPF

⁴ Disclosure reports showing contributions to Mr. Snitker appear on the Commission's website at http://query.nictusa.com/cgi-bin/can_detail/S0FL00395/ (last visited July 22, 2010).

1 Constitution, By-Laws, and Standing Rules satisfy the requirements of 2 U.S.C. 431(15)
2 and 11 CFR 100.14(a).

3 Because all three elements of the definition of “State committee” are satisfied, the
4 Commission determines that the LPF qualifies as a State committee of a political party
5 under the Act and Commission regulations.

6 This response constitutes an advisory opinion concerning the application of the
7 Act and Commission regulations to the specific transaction or activity set forth in your
8 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
9 of the facts or assumptions presented and such facts or assumptions are material to a
10 conclusion presented in this advisory opinion, then the requester may not rely on that
11 conclusion as support for its proposed activity. Any person involved in any specific
12 transaction or activity which is indistinguishable in all its material aspects from the
13 transaction or activity with respect to which this advisory opinion is rendered may rely on
14 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or
15 conclusions in this advisory opinion may be affected by subsequent developments in the
16 law including, but not limited to, statutes, regulations, advisory opinions, and case law.

17 All cited advisory opinions are available on the Commission’s website at
18 <http://saos.nictusa.com/saos/searchao>.

19 On behalf of the Commission,
20

21
22
23 Matthew S. Petersen
24 Chairman